

contrast, the first material in the present application is formed by deposition techniques. As indicated in the present application on page 5, lines 14-26, deposited and thermally grown oxides have different etch rates. Thus, the argument that the materials are the same is simply untrue.


The Examiner admits as much and then inexplicably contends that the use of the term deposited is just a product-by-process limitation. Of course, this is plainly in error because the claim does not require depositing. It simply requires the ratio of etch rates. The Examiner cannot legitimately argue (as attempted in lines 7-9 of the second paragraph of the office action) that inherently the etch rates are the same and then admit three lines below that, of course, the materials are not the same. Plainly, the product-by-process argument is inapplicable with respect to claim 26.

With respect to the dependent claims, it is equally inapplicable since it is not a product-by-process limitation. But, as pointed out in the specification, the language defines a property of the material. Deposited materials have different etch rates than thermally grown materials. Therefore, this cannot be considered a product-by-process limitation even as to the dependent claims.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested.

Respectfully submitted,

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